Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the question referred to it by the Verwaltungsgericht Stuttgart by order of that court of 18 June 1969 hereby rules:

1. **The second indent of Article 4 of Decision No 69/71/(EEC) of 12 February 1969, as rectified by Decision No 69/244/(EEC), is to be interpreted as only requiring the identification of those benefiting from the measures for which it provides; it does not, however, require or prohibit their identification by name so as to enable checks to be made;**

2. **Examination of the question referred to the Court by the Verwaltungsgericht Stuttgart reveals nothing capable of affecting the validity of the said Decision.**

Lecourt Monaco Pescatore

Donner Trabucchi Strauß Mertens de Wilmars

Delivered in open court in Luxembourg on 12 November 1969.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 29 OCTOBER 1969[1]

Mr President,
Members of the Court,

The excess butter production in the Community and the failure until now to produce effective measures to prevent increases in production has made it ever more imperative to attempt to reduce the butter surplus with the aid of measures designed to increase consumption.
This was the intention behind the Decision of the Commission of 12 February 1969 (Official Journal L 52 69) taken in pursuance of Articles 28 and 35 of Regulation No 804/68 of the Council

1 — Translated from the German.

on a common organization of the market in milk and milk products. It authorized Member States to make cheap butter available to certain categories of consumers in receipt of certain social security payments; more precisely, it allowed a subsidy of up to 1.45 units of account per kg of butter in order to enable its price to fall to the level of the price of margarine. Since the butter was to be sold through the trade, not through administrative authorities, it seemed necessary to provide for measures of control designed to ensure that the cheap butter did in fact end up in the hands of consumers in receipt of social security payments. Therefore Article 4 of the Commission's decision provided, in its *German* version, as follows: 'Die Mitgliedstaaten treffen alle erforderlichen Maßnahmen, damit . . . die Begünstigten der in Artikel 1 vorgesehenen Maßnahmen Butter nur gegen einen auf ihren Namen ausgestellten Gutschein erhalten können'. ('Member States shall take all measures necessary to ensure that . . . those entitled to benefit from the measures laid down in Article 1 may only receive butter in exchange for a coupon issued in their names'). The Federal Republic of Germany made use of this authorization. The Federal Minister for Food, Agriculture and Forests issued directives accordingly on 11 March 1969 (Bundesanzeiger 1969 No 52, p. 3) making provision for the issue of coupon books. These books were to comprise a stub to which eight detachable coupons were attached. In order to facilitate the controls it was provided that the stub was only valid if it bore a name and that coupons were only exchangeable in shops if they were still attached to the stub.

As a recipient of a war victims' pension, the applicant in the main action, who was resident in Ulm, also benefited from the scheme which I have just described. But he considers that it is 'discriminatory' to require beneficiaries to reveal their names and addresses to traders. Being of the opinion that this constituted an infringement of the fundamental rights enshrined in the Grundgesetz (Basic Law) of the Federal Republic of Germany, he made a constitutional complaint to the Bundesverfassungsgericht (Federal Constitutional Court) on 22 April 1969. In addition he commenced an administrative action on 22 May on the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court) against the City of Ulm. In the same proceedings he also sought an interim injunction against the City of Ulm.

After examining the facts of the case the Verwaltungsgericht came to the conclusion that the requirement imposed by the Commission's decision that names be revealed gave reasonable grounds to doubt the legality of the Commission's decision in view of the fundamental rights protected by national law. Since it was further of the view that even in proceedings for an interim injunction it was possible to refer questions to the European Court of Justice under Article 177 of the EEC Treaty, it made an order on 18 June 1969 referring the following question for a preliminary ruling:

> 'Can the fact that the Decision of the Commission of the European Communities of 12 February 1969 (69/71/EEC) makes the sale of butter at a reduced price to beneficiaries under certain welfare schemes dependent on revealing the name of the beneficiary to the sellers be considered compatible with the general principles of Community law in force?'

Only the Commission of the European Communities has expressed its views in writing and orally on this question (it was, moreover, asked to intervene in the national proceedings).

My legal opinion on the question referred is as follows.

1. As regards admissibility there are no particular problems. Admittedly the

second paragraph of Article 177 does say that an answer to a question referred must be necessary to enable a *judgment* to be given. However, there seems to be nothing objectionable to preliminary rulings also being sought for the purposes of an order for interim measures. In the same way as judgments of first instance, which are certainly covered by the second paragraph of Article 177, they can sometimes have legal consequences effects of which extend over a considerable length of time. If in addition to this questions of validity are involved one can even share the Commission's view that it is particularly desirable to clarify the question as early as possible, and therefore, if necessary, in the course of proceedings for a stay of execution.

In the present case the Court is not, contrary to what one might think at first sight, being asked about the compatibility of a Community measure with national constitutional law. In fact in view of your previous case-law examination of such a question would be impossible. The court making the reference is asking for a decision on the legal validity of the Commission's decision in the light of 'the general legal principles of Community law in force'. As the grounds of the order making the reference show, the Verwaltungsgericht thus thinks that it must be *guided by reference* to the fundamental principles of national law. This is in line with the view taken by many writers that general qualitative concepts of national constitutional law, in particular fundamental rights recognized by national law, must be ascertained by means of a comparative evaluation of laws, and that such concepts, which form an unwritten constituent part of Community law, must be observed in making secondary Community law. Applying this test, there is accordingly every justification for seeking to test the validity of a Commission decision.

2. As I have said the applicant in the main proceedings objects to having to present a coupon which identifies him *by name* when he buys cheap butter. Correspondingly, the request from the Verwaltungsgericht Stuttgart refers solely to Article 4, second indent, of the Commission's Decision of 12 February 1969. The court's doubts as to the legal validity of this decision are based on the assumption that the abovementioned requirement is clearly stated in the decision. There is therefore no corresponding request for an *interpretation*. That does not mean, however, that the Court of Justice has simply to found its decision on the interpretation adopted by the court making the reference, but rather that it may proceed on the basis that the request for examination as to validity contains an *implied* request for an interpretation of the Community measure. Accordingly I share the Commission's opinion that the Court of Justice should first concern itself with interpreting the Commission's decision so that it may afterwards decide whether there is in fact any question of validity remaining.

The interpretation of Article 4 of the Commission's decision presents no problems whatsoever if one relies solely on the German version and the Dutch one which corresponds to it. The formula they use is 'auf ihren Namen ausgestellten Gutschein' (or 'een op naam gestelde bon'). The French and Italian versions differ from this however, referring only to 'bon individualisé' and to 'buono individualizzato' respectively. This corresponds, moreover, to the grounds given for the decision where—and here the Dutch version agrees—only the term 'coupon referring to the person concerned' is used. So there is no doubt that the versions in other languages are *wider*, for coupons can certainly refer to the beneficiary in ways other than by naming him (for instance, as the Commission has pointed out, by consecutive numbering). This difference has an important effect on interpretation. It is of course obvious that the Commission

intended to issue only one measure equally binding for all Member States. This is demonstrated in particular by Article 6 of the Decision. But if one is not to proceed on the basis of differing conditions applying in the various Member States, an attempt must be made to find a uniform interpretation for the Commission's decision notwithstanding the different language versions. This is a recurring problem for Community measures which are binding in four languages. In the present case, however, there is no need for a solution based on principles, which can raise problems particularly with regard to legislative measures. A solution seems, on the contrary, to be relatively easy in that the decision is one which is addressed *to the Member States,* and because the necessary explanation is clearly discernible in the history of the measure. As we have heard, the authorization provided for in the decision is a result of a suggestion from the Federal Republic of Germany. In a telex message of 16 January 1969 it had expressed a wish to sell a certain amount of cheap butter to recipients of social security payments during the first half year of 1969. It suggested the introduction of coupons the stubs of which would bear the name of the recipient. On the basis of this suggestion a draft decision was drawn up in French. In accordance with Article 30 of Regulation No 804/68 the Management Committee for milk and milk products, which includes representatives of Member States, did in fact have doubts specifically with regard to the naming of beneficiaries on the coupons. As a result the words 'détaché d'une carte portant l'identité de l'acheteur' were deleted from the original draft and only the words 'en échange d'un bon individualisé' were retained. This formula was approved by all the delegates on the Committee. It is important to note that the Commission is not bound by the Opinion of the Committee when it adopts its measures, but that according to Article 30(3) of Regulation No 804/68 it is bound to communicate any differences of opinion to the Council without delay. This was not done in the present case. It follows necessarily from this and from the sixth recital in the preamble to the decision that the Commission intended to give its measure the meaning approved of by the Management Committee in its Opinion on the French draft of the decision. The divergences in the German and Dutch texts are accordingly revealed as simply errors in translation which could have occurred during preparation of the text for adoption by the Commission in the written proceedings. This was perfectly apparent to the Member States who, as we have seen, collaborated closely in drawing up the texts. Further clarification was provided in the decision of the Commission of 29 July 1969, Article 2 of which says: 'In the German version of Article 4, second indent, of the said Decision' (that is, the Decision of 12 February 1969) 'the words "auf ihren Namen ausgestellten" shall with effect from 17 February 1969' (the date of the entry into force of the decision) 'be replaced by the word "individualisierten" '.

There is thus no doubt as to how the Decision of the Commission of 12 February 1969 should be understood. The only requirement Member States are required to fulfil is to issue coupons *referring to the person* concerned. There is no requirement on the other hand that the *name* be included precisely because personal coupons can be issued in other ways. This means not only that the question of validity raised by the court making the reference is unnecessary. It can also be concluded, without going further into the problem, that the requirement that coupons referring to the persons concerned be issued, imposed by the Commission, does not in any way encroach on fundamental rights. The present proceedings are not

concerned with the possible problem of fundamental rights which may arise on the national level owing to the continued applicability of the *national* provision which does require the name to be indicated.

As suggested by the Commission, the following answer may be given to the Verwaltungsgericht Stuttgart: 'Examination of the question referred to the Court of Justice reveals no ground for holding the decision of the Commission of 12 February 1969 (read in conjunction with the rectification of 29 July 1969) invalid to the extent that it makes the provision of cheap butter dependent on the presentation of a coupon referring to the person concerned'.